

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DANIEL P. MOORE and DEPARTMENT OF THE NAVY,  
NAVAL WEAPONS STATION EARLE, Colts Neck, NJ

*Docket No. 98-2603; Submitted on the Record;  
Issued March 22, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has greater than a 12 percent permanent impairment of his left leg, for which he received a schedule award.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the June 8, 1998 decision of the Office of Workers' Compensation Programs' hearing representative is in accordance with the facts and the law in this case and hereby adopts findings and conclusions of the hearing representative.<sup>1</sup>

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<sup>1</sup> On appeal appellant's representative argues, again, that there is a conflict in the medical evidence, and that Dr. Arnold Potash, a Board-certified surgeon, used the American Medical Association, *Guides to the Evaluation of Permanent Impairment* in his impairment determination, such that the Office medical adviser cannot be the weight of the medical evidence. Appellant's representative also argued that FECA Bulletin 95-17 had not been adopted by the Board as a substitution for the A.M.A., *Guides*, that the A.M.A., *Guides* anticipated duplicity, and that the FECA Bulletin was simply an effort by the Office to circumvent the requirements of the A.M.A., *Guides*. The Board finds no bases for any of these arguments as the FECA Bulletin is based upon the A.M.A., *Guides*, particularly sections 3.2(c) & 3.2(d), pp. 76-77, (fourth edition 1993) regarding the validity of muscle testing in the presence of significant pain.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 8, 1998 is hereby affirmed.

Dated, Washington, D.C.  
March 22, 2000

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member